

REBUTTAL TESTIMONY OF
JOHN E. FOLSOM, JR.
ON BEHALF OF
DOMINION ENERGY SOUTH CAROLINA, INC.
DOCKET NO. 2021-88-E

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND**
2 **OCCUPATION.**

3 A. My name is John E. (“Eddie”) Folsom, Jr. My business address is 6248 Bush
4 River Road, Columbia, South Carolina 29212. As Senior Market Originator, my
5 responsibilities focus on long-term wholesale power business for Dominion Energy
6 South Carolina, Inc. (“DESC”).

7
8 **Q. ARE YOU THE SAME EDDIE FOLSOM THAT OFFERED DIRECT**
9 **TESTIMONY IN THIS DOCKET?**

10 A. Yes, I am.

11
12 **Q. ARE YOU SPONSORING ANY EXHIBITS TO YOUR REBUTTAL**
13 **TESTIMONY?**

14 A. Yes. Revised Exhibit No. __ (Revised JEF-1) contains the revised NOC
15 Form (clean and comparison that includes proposed revisions). This exhibit, as
16 originally filed, has been revised to reflect the changes set forth in my rebuttal

1 testimony. Accordingly, this exhibit is attached and submitted in place of that
2 original exhibit.

3
4 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

5 A. The purpose of my rebuttal testimony is to respond to certain portions of the
6 direct testimony submitted by Witness Levitas on behalf of the Carolinas Clean
7 Energy Business Association (“CCEBA”). Specifically, I will respond to Witness
8 Levitas’s suggested revisions to the proposed form power purchase agreement (the
9 “Form PPA”), standard offer power purchase agreement (“Standard Offer”), and
10 Notice of Commitment to Sell Form (the “NOC Form”). The lack of a response to
11 any of the specific assertions made by any witness does not necessarily constitute
12 DESC’s agreement to those assertions.

13
14 **REBUTTAL TO DIRECT TESTIMONY OF WITNESS LEVITAS**

15 **Q. ON PAGE 8, LINES 5-14, WITNESS LEVITAS TAKES ISSUE WITH FOUR**
16 **ITEMS IN DESC’S PROPOSED FORM PPA AND STANDARD OFFER.**
17 **CAN YOU PLEASE ADDRESS EACH OF THESE ITEMS?**

18 A. Yes, in summary, Witness Levitas takes issue with the following items in
19 DESC’s proposed Form PPA:
20 ➤ DESC’s proposal to remove the express option for the Seller to provide cash
21 collateral as a form of Performance Assurance under the Form PPA;

- DESC's increase in the amounts of certain insurance coverages;
- DESC's proposed revisions to the form surety bond; and
- The treatment of ancillary services under the Form PPA.

I will address the first three proposed changes, while Witness Kassis will address Witness Levitas's proposed treatment of ancillary services in his rebuttal testimony.

Q. ON PAGE 9, LINES 4-5, WITNESS LEVITAS STATES THAT "NO RATIONALE IS PROVIDED, HOWEVER, FOR WHY DOMINION ENERGY, INC. HAS DECIDED NOT TO ACCEPT CASH COLLATERAL NOR IS IT OBVIOUS WHAT DIFFICULTY IS PRESENTED IN DOING SO." CAN YOU PLEASE RESPOND TO THIS STATEMENT?

A. Yes, I can. However, at the outset, let me explain that DESC did not anticipate this change would be problematic for developers given that no currently-effective PPA is utilizing this option. This factor, combined with the fact that DESC's parent company does not accept cash collateral, influenced DESC's decision to remove this express option from the Form PPA and Standard Offer. However, even with DESC's deletion of the cash collateral option, the Form PPA and Standard Offer still permitted developers to utilize cash collateral if mutually agreed upon between the developer and DESC. Given this fact and the apparent appetite for this option that has not yet become evident in DESC's service territory, DESC is comfortable

1 leaving cash collateral as an express option for Performance Assurance in the Form
2 PPA and Standard Offer.

3
4 **Q. ON PAGE 10, LINES 6-7, WITNESS LEVITAS PROTESTS THAT DESC'S**
5 **CHANGE TO ITS INSURANCE REQUIREMENTS IN THE PPA PROVIDE**
6 **DESC WITH "UNFETTERED DISCRETION TO REQUIRE PROOF OF**
7 **INSURANCE AT ANY TIME AFTER A PPA IS SIGNED." HOW DO YOU**
8 **RESPOND TO THIS CHARACTERIZATION?**

9 A. Although Witness Levitas objects to DESC being able to simply request a
10 certificate of insurance at any time during the term of the agreement, to DESC's
11 knowledge, requests for insurance certificates under existing PPAs have not been
12 problematic for developers. Moreover, ensuring that a project facility maintains
13 insurance is a basic aspect of developing such a complex and costly facility. Put
14 simply, DESC does not intend to utilize this provision to create an administrative
15 burden for these projects, but DESC should be able to verify this aspect of a project's
16 development pursuant to the PPA.

17
18 **Q. ON PAGE 12, LINES 11-12, WITNESS LEVITAS OBJECTS TO DESC'S**
19 **INCREASE TO THE AMOUNTS OF CERTAIN REQUIRED COVERAGES.**
20 **CAN YOU EXPLAIN WHY THESE CHANGES WERE MADE?**

1 A. Yes, but I would first like to note that Witness Levitas does not protest the
2 types of coverages, but only the amounts associated with such coverage, which were
3 increased to conform with DESC's parent company. These increases reflect, in part,
4 the deployment of emerging technologies, which are quickly becoming a more viable
5 option for these generators. For example, these complex facilities may implement
6 battery storage or utilize inverter-based generation while remaining within the
7 bounds of PURPA, but are nevertheless well in excess of 80 MW-DC. In many cases,
8 these emerging technologies—in addition to simply increasing the value of the
9 insurable property at the site—introduce additional safety concerns. As such, an
10 increase to the amount of insurance coverage is warranted to ensure that these
11 generators are adequately insured, thereby mitigating risk to DESC's customers.
12

13 **Q. ON PAGE 11, LINE 15, THROUGH PAGE 12, LINE 11, WITNESS LEVITAS**
14 **EXPLAINS THAT HE ONLY TAKES ISSUE WITH TWO ITEMS FROM**
15 **DESC'S REVISED SURETY BOND. CAN YOU PLEASE ADDRESS THOSE**
16 **ITEMS?**

17 A. Yes, I can. Specifically, Witness Levitas alleges that (i) shortening the
18 payment window from 15 to 10 days is unreasonable and (ii) requiring the surety
19 bond to waive certain legal defenses amounts to a "poison pill." Put simply, these
20 changes were included by DESC as yet additional measures to ensure that its
21 customers are adequately protected. Likewise, DESC disagrees with Witness

1 Levitas's characterization of the second change as a "poison pill" given that DESC's
2 parent company has utilized this form surety bond in the marketplace for a number
3 of years.

4
5 **Q. ON PAGE 14, LINES 15-16, WITNESS LEVITAS STATES THAT THE "NOC**
6 **FORM ORIGINATES FROM THE CONCEPT THAT UTILITIES SHOULD**
7 **BE PREVENTED FROM CIRCUMVENTING PURPA'S REQUIREMENTS**
8 **BY REFUSING TO ENTER INTO A CONTRACT WITH THE**
9 **QUALIFYING FACILITY." DOES THIS STATEMENT ACCURATELY**
10 **REFLECT PURPA?**

11 A. Not entirely—to be clear, PURPA creates the legally enforceable obligation
12 ("LEO") concept to, in part, ensure that utilities cannot simply stonewall QF
13 development by refusing to execute a PPA, as cited by Witness Levitas. Although
14 states across the country have established NOC Forms as part of their
15 implementation of PURPA, PURPA does not require a NOC Form. However, given
16 that Act 62 requires the Commission to approve a NOC Form, the NOC Form should
17 embody not only the FERC's rules and regulations regarding a LEO, but also best
18 practices from other states that have implemented similar NOC Forms in accordance
19 with the FERC's guidance.

20

1 Q. ON PAGE 15, LINE 1, WITNESS LEVITAS STATES THAT THE
 2 FORMATION OF A LEO SHOULD “TURN SOLELY ON A QF’s
 3 COMMITMENT.” (EMPHASIS IN ORIGINAL). DO YOU AGREE?

4 A. I agree that the formation of a LEO does revolve around a QF’s commitment
 5 to sell power to DESC. However, the level of commitment is the threshold factor,
 6 not simply the existence of such a commitment. That is, although a LEO is a “non-
 7 contractual, but binding” obligation, whether or not a LEO is actually established
 8 depends upon the level of the QF’s commitment.¹ The seriousness of commitment
 9 required on the part of the QF has been described as “substantial” or “unconditional,”
 10 and a QF must be “sufficiently advanced in their development” to establish a LEO.²
 11 Put simply, an adequate level of commitment on the part of the QF is necessary to
 12 ensure that the FERC’s fundamental LEO principles are upheld—a demonstration of
 13 commercial viability and financial commitment by the QF.³ In fact, two of the three
 14 items with which Witness Levitas takes issue in the NOC Form were intended to
 15 mirror FERC’s holdings in its recently issued Order No. 872.⁴ However, as discussed

¹ *JD Wind I, LLC*, 129 FERC ¶ 61,148, at P 25 (2009), *reh’g denied*, 130 FERC ¶ 61,127 (2010) (emphasis added).

² *Whitehall Wind, LLC v. Mont. Pub. Serv. Comm’n*, 347 P.3d 1273, 1276 (Mont. 2015) (“[T]he Commission examined the ‘totality of the circumstances to determine if the [qualifying facility] has made an **unconditional commitment** to deliver energy, capacity[,] or energy and capacity.’”) (alteration in original) (citation omitted) (emphasis added); *In the Matter of the Amended Joint Complaint Filing by Trireme Energy Dev. II, LLC; Pryor Caves Wind Project LLC; Mud Springs Wind Project LLC; & Horse Thief Wind Project LLC Against Rocky Mountain Power & PacifiCorp Regarding the Avoided Cost Pricing for the Bowler Flats Wind Qualifying Facilities Power Purchase Agreements*, No. 20000-505-EC-16, 2018 WL 6931868, at *10–12 (Dec. 31, 2018) (Requiring an “absolute unconditional commitment.”); *Joint Application of Duke Energy Carolinas, LLC and Duke Energy Progress*, Docket 2019-185-E, 2019-186-E, Order No. 2019-881(A) (“substantial and binding commitment.”); Order No. 872 at ¶ 685.

³ Order No. 872 at ¶ 65.

⁴ *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, Order No. 872, 85 FR 54638 (Sep. 2, 2020), 172 FERC ¶ 61,041 (2020) (“Order No. 872”).

1 below, DESC has attempted to compromise in good faith with respect to each of
2 Witness Levitas's suggestions regarding the NOC Form, while upholding the key
3 tenets of PURPA's LEO standard as implemented by the FERC and other states.
4

5 **Q. ON PAGE 15, LINE 21, THROUGH PAGE 16, LINE 4, WITNESS LEVITAS**
6 **TAKES ISSUE WITH THREE PROPOSED CHANGES TO THE NOC**
7 **FORM. CAN YOU PLEASE ADDRESS EACH ITEM?**

8 A. Yes, in summary, Witness Levitas takes issue with the following items in the
9 NOC Form:

- 10 ➤ Requirements related to site control in Section 4(iii);
11 ➤ Requirements related to applicable permits and zoning approvals in Section 4(iv);
12 and
13 ➤ The deadline by which a QF must execute a PPA in Section 8(ii).
14

15 **Q. ON PAGE 16, LINES 11-13, WITNESS LEVITAS CLAIMS THAT**
16 **“READINESS TO BEGIN CONSTRUCTION OF A PROJECT IS NOT A**
17 **REASONABLE OR PERMISSIBLE REQUIREMENT FOR FORMATION**
18 **OF A LEO.” HAS THE FERC PROVIDED GUIDANCE ON THIS ISSUE?**

19 A. Yes, in Order No. 872. To be clear, Section 4(iii) does not require
20 commencement of construction, only that the seller takes meaningful steps to obtain
21 control such that it could commence construction. The operative concept here is site

1 control and this language mirrors the concepts in Order No. 872. To clear up any
2 confusion on this item, DESC is willing to revise this language to more closely
3 resemble the FERC's order. That revision is shown in Revised Exhibit No. ____
4 (Revised JEF-1) and included below for reference:

5 Seller has taken meaningful steps to obtain site control of the Project
6 Site adequate to commence construction of the Facility.

7 As such, DESC is confident that this language reflects not only the FERC's
8 guidance, but also a best practice in ensuring that a QF is substantially committed
9 to selling power to DESC.

10
11 **Q. ON PAGE 16, LINE 20, WITNESS LEVITAS ALLEGES THAT A QF**
12 **SHOULD NOT BE REQUIRED TO APPLY FOR "ALL LOCAL PERMITS**
13 **AND ZONING APPROVALS" PRIOR TO SUBMITTING THE NOC FORM.**
14 **WHAT GUIDANCE HAS THE FERC PROVIDED ON THIS TOPIC?**

15 A. Order No. 872 expressly provides that a state can require "the QF to show
16 that it has submitted all applications, including filing fees, to obtain all necessary
17 local permitting and zoning approvals."⁵ Although DESC simply mirrored language
18 directly from the FERC's order, DESC believes it has protections in place via the
19 Form PPA that would ensure the project progresses in accordance with its targeted
20 commercial operation date. As such, DESC has revised this specific language in
21 Section 4(iv) to refer to only the period prior to the commencement of construction.

⁵ Order No. 872 at ¶ 685.

1 That revision is shown in Revised Exhibit No. ____ (Revised JEF-1) and included
2 below for reference:

3 The documents attached hereto as Exhibit B establish that Seller has
4 secured—or has submitted all applications and filing fees necessary
5 to secure—all local permitting and zoning approvals for the Project
6 Site necessary to commence construction of the Facility.

7 However, this further highlights the need to place a reasonable parameter on the
8 amount of time a QF has to execute a PPA after submitting the NOC Form.

9
10 **Q. ON PAGE 17, LINE 20, WITNESS LEVITAS CLAIMS THAT THE NOC**
11 **FORM SHOULD NOT TERMINATE IF THE QF FAILS TO EXECUTE A**
12 **PPA WITHIN 90 DAYS OF SUBMISSION. PLEASE ADDRESS THIS**
13 **CLAIM.**

14 **A.** As described above, there is a need to ensure the project is moving along in
15 development and to bring it within the existing PPA protections and milestones.
16 Many of these protections and milestone obligations are simply not present in the
17 NOC Form given that the NOC Form is not intended to address those items.
18 However, DESC appreciates Witness Levitas's concern that strict compliance with
19 the 90-day window may be difficult for certain projects—particularly more complex
20 projects that deploy emerging technologies. As such, DESC is willing to
21 compromise and views Witness Levitas's proposed language for Section 8(ii) as a
22 reasonable solution, while still ensuring that projects progress appropriately through

1 their stages of development. That revision is shown in Revised Exhibit No. ____
2 (Revised JEF-1) and included below for reference:

3 If Seller does not execute a PPA for the Facility within the later of (i) 90
4 business days after the Submittal Date, or (ii) 60 business days after receipt
5 of an executable PPA from the Company, provided, however, that if a final
6 interconnection agreement for the Facility has not been tendered to Seller
7 five business days prior to the expiration of such deadline, the deadline for
8 execution of the PPA shall be the date that is five business days after the
9 date that the final interconnection agreement is tendered to the Seller.

10
11 **Q. WHAT WOULD BE THE NET IMPACT TO THE FORM PPA, STANDARD**
12 **OFFER, AND NOC FORM IF THE COMMISSION ADOPTED ALL OF THE**
13 **CHANGES PROPOSED BY WITNESS LEVITAS?**

14 A. As you can see, DESC has attempted to compromise in good faith wherever
15 possible, without sacrificing necessary and appropriate consumer protection
16 measures. However, accepting all of Witness Levitas's changes—without
17 compromise or modification—would dilute or eliminate several consumer
18 protections measures and industry best practices to the detriment of DESC's
19 customers and, with respect to Witness Levitas's efforts to establish a LEO by
20 simply showing a "commitment" without examining the seriousness of such
21 commitment, without more, would not only be a serious departure from the FERC's
22 precedent, but also the level of heightened commitment required in various other
23 states.

24
25 **CONCLUSION**

1 **Q. DOES THIS CONCLUDE YOUR PRE-FILED REBUTTAL TESTIMONY?**

2 A. Yes.

DOMINION ENERGY SOUTH CAROLINA, INC.

NOTICE OF COMMITMENT TO SELL FORM

This notice of commitment form (the “Notice of Commitment”) is for use by a qualifying facility (“QF”) to certify (i) the substantial and unconditional commitment of the project to sell the output of such proposed project to Dominion Energy South Carolina, Inc. (the “Company”), (ii) the commercial viability of the project, and (iii) the Seller’s (as defined below) financial commitment to develop the project, all as provided for in S.C. Code Ann. § 58-41-20(D), 18 C.F.R. 292.304(d)(2), and 18 C.F.R. 292.304(d)(3).

Execution and submittal of this Notice of Commitment is not required for a QF to negotiate a Power Purchase Agreement (“PPA”) with the Company. However, by submitting this form, [REDACTED] (“Seller”) commits to sell power to the Company from the facility described below in Section 3 (the “Facility”), and the Company will rely upon this Notice of Commitment to plan for and serve its load. The Company and the Seller are herein collectively referred to as the “Parties.” Seller shall deliver this Notice of Commitment, along with any other notices hereunder, via certified mail, courier, hand delivery or email to:

Dominion Energy South Carolina, Inc. – Renewable Energy Technical Services
220 Operation Way
Mail Code: B-101
Cayce, South Carolina 29033
Attn.: Manager, Renewable Energy Technical Services
QFContracts@dominionenergy.com

1. Seller hereby commits to sell to the Company all of the electrical output of the Facility described below, located at _____ (the “Project Site”); provided, however, that if the maximum net power production capacity of the Facility is 1 MW or less, and such QF is exempted from filing with the Federal Energy Regulatory Commission (the “FERC”) to obtain QF status, the Facility Description in Section 3 shall be deemed the “Project Site.”
2. The name, address, and contact information for Seller is:

Name: _____

Telephone: _____

Address: _____

Email: _____

3. Facility Description:

- i. Generator.

- (1) QF status filed with the FERC in Docket No.:

- (2) Maximum Gross Power Production Capacity in MW_{DC} listed on line 7a of the Generating QF's FERC Form 556:

- (3) Maximum Net Power Production Capacity in MW_{AC} listed on line 7g of the Generating QF's FERC Form 556:

- (4) Fuel Source:

- (5) Please attach 8760 projections for the total Facility output (including storage, if applicable) as Exhibit A.
- (6) Electrical Location:

- (7) Physical Location (Address, E 911, or GPS):

ii. ☐ Storage (check this box if the project contains a storage component).

- (1) Is there a Form 556 on file with the FERC—other than the form referenced in Section 3(i)(1), if any—that relates to the storage device?
 - a. Yes ☐
 - i. If yes, please provide the FERC Docket No.:

 - b. No ☐
- (2) Description of storage device in the Form 556 that is referenced in Section 3(i)(1) or 3(ii)(1), as applicable:

- (3) AC or DC coupled:

- (4) Generation Fuel Source:

- (5) Maximum Net Discharge Rating in MW_{AC}: _____

- (6) Maximum Discharge Rating in MW_{DC}: _____
- (7) Maximum Charge Rating MW_{DC}: _____
- (8) Rated Battery Storage Capacity in MWh_{AC}: _____
- (9) Hours of Discharge at Maximum Net Discharge Rating (Hours):

- (10) Maximum Discharge Ramp Rate MW_{AC}/s:

- (11) Round Trip Efficiency (%): Best, worse, and average:

- (12) Will Seller operate the storage device in accordance with the Company's dispatch instructions?
 - a. Yes ☐
 - b. No ☐
- (13) Electrical Location:

- (14) Physical Location (Address, E 911, or GPS):

4. By execution and submittal of this Notice of Commitment, Seller certifies as follows:

- i. Subject to Section 8(ii) below, Seller shall commence delivery of its electrical output to the Company on or before the date that is 365 days after the Submittal Date (as defined below).
- ii. Seller will be able to deliver the full electrical output of the Facility to the Company for a period of 10 years, or for such lesser period that may be mutually agreed to in a PPA executed by the Parties (the "Delivery Term").
- iii. Seller has taken meaningful steps to obtain site control of the Project Site adequate to commence construction of the Facility.
- iv. The documents attached hereto as Exhibit B establish that Seller has secured—or has submitted all applications and filing fees necessary to secure—all local permitting and zoning approvals for the Project Site necessary to commence construction of the Facility.
- v. Seller either has Interconnection Service for the Facility or has requested Interconnection Service for the Facility from the Company, pursuant to the

South Carolina Generator Interconnection Procedures, Forms, and Agreements. If the Company has tendered a System Impact Study Agreement to Seller, then Seller has executed and returned to the Company a signed System Impact Study Agreement with all technical data necessary to complete the System Impact Study, and has paid any deposits required therein.

- vi. On or prior to the Submittal Date, Seller submitted a non-refundable fee to the Company in the amount of five thousand dollars (\$5,000.00).
5. This Notice of Commitment shall take effect on its “Submittal Date” as hereinafter defined. “Submittal Date” means (i) the receipted date of deposit of this Notice of Commitment with the U.S. Postal Service for certified mail delivery to the Company, (ii) the receipted date of deposit of this Notice of Commitment with a third-party courier (e.g., Federal Express, United Parcel Service) for trackable delivery to the Company, (iii) the receipted date of hand delivery of this Notice of Commitment to the Company at the address set forth above, or (iv) the date on which an electronic copy of this Notice of Commitment is sent via email to the Company if such email is sent during regular business hours (9:00 a.m. to 5:00 p.m.) on a business day (Monday through Friday excluding federal and state holidays). Emails sent after regular business hours or on days that are not business days shall be deemed submitted on the next business day.
6. By execution and submittal of this Notice of Commitment, Seller acknowledges that the rates for purchases from the Facility will be based on the Company’s applicable avoided cost rates as of the Submittal Date, calculated using data current as of the Submittal Date, unless otherwise mutually agreed.
7. The Parties acknowledge and agree that upon execution of a PPA for the Facility by the Parties, the terms and conditions therein shall govern the purchase and sale of power by and between the Parties.
8. This Notice of Commitment shall automatically terminate, except for those provisions contained in Section 9, and be of no further force and effect in each of the following circumstances:
- i. Upon execution of a PPA between Seller and Company for the Facility.
 - ii. If Seller does not execute a PPA for the Facility within the later of (i) 90 business days after the Submittal Date, or (ii) 60 business days after receipt of an executable PPA from the Company, provided, however, that if a final interconnection agreement for the Facility has not been tendered to Seller five business days prior to the expiration of such deadline, the deadline for execution of the PPA shall be the date that is five business days after the date that the final interconnection agreement is tendered to the Seller.
 - iii. If the Seller does not commence delivery of the electrical output of the Facility to the Company within 365 days of the Submittal Date; provided, however, the Company has sufficient interconnection facilities available. If

the Company determines that (i) sufficient interconnection facilities or (ii) other facilities and equipment including any modification, additions or upgrades to the Company's system, as specified in the interconnection agreement, that are needed to accommodate delivery of energy to the Company's System from the Facility ("Network Upgrades") are not available, and the delay in the availability of sufficient interconnection facilities or Network Upgrades is caused by (a) an event of Force Majeure (as that term is defined and governed in Article X of the Company's Form PPA approved by the Public Service Commission of South Carolina in Docket No. 2021-88-E), (b) a delay caused solely by Company, or (c) any delay in the Company's completion of the interconnection facilities or the Network Upgrades by the date that is 365 days after the Submittal Date unless Seller directly or indirectly has caused such delay; the Company shall inform the Seller at least 30 calendar days prior to the expiration of such 365-day period, and shall give the Seller a description of the additional facilities required to be constructed by the Company in order to establish adequate interconnection facilities. For the avoidance of doubt, neither party shall incur liability to the other for liquidated damages or similar damages pursuant to this Section 8(iii) arising out of the Company having insufficient interconnection facilities or Network Upgrades.

9. Upon termination of this Notice of Commitment pursuant to Section 8(ii) or (iii):

- i. The Seller shall pay to Company liquidated damages equal to the sum of (i) \$5,000.00 per MW-AC for Maximum Gross Power Production Capacity (as specified in Section 3(i) above) up to 20 MW-AC plus (ii) \$2,000.00 per MW-AC for all capacity above 20 MW-AC (as specified in Section 3(i) above). Company shall receive such payment of liquidated damages within fifteen (15) days of the effective date of the termination of this Notice of Commitment.
- ii. Neither Seller nor any affiliate and/or successor of Seller, nor any affiliate and/or successor of Seller to the Facility, including, without limitation, ownership and/or operation of the Facility, will require or seek to require the Company to purchase any output (energy or otherwise) from the Facility under any applicable law (including without limitation PURPA) or otherwise at a price higher than the Company's applicable avoided cost rates as of the Submittal Date for any period during the 2 years following such termination. Seller, on behalf of itself and on behalf of any other person or entity on whose behalf it may act, and on behalf of any successor to Seller or successor to the Facility, hereby agrees to the terms and conditions in the above sentences, and hereby waives any right it may have to dispute the above sentence.

[signature page follows]

I swear or affirm, in my capacity as a duly-appointed officer of the Seller, that (i) I have personal knowledge of the facts stated in this Notice of Commitment, (ii) the Company may rely on this commitment for its resource needs and resource planning purposes, and (iii) I have authority to make this application on behalf of Seller, (iv) to my knowledge, all of the statements and representations made in this Notice of Commitment are true and correct as of the date hereof, and (v) Seller will comply will all requirements of the Public Service Commission of South Carolina and this Notice of Commitment.

By

Name

Title

Date

Exhibit A

See attached.

Exhibit B

See attached.

DOMINION ENERGY SOUTH CAROLINA, INC.

NOTICE OF COMMITMENT TO SELL FORM

This notice of commitment form (the “Notice of Commitment”) is for use by a qualifying facility (“QF”) to certify ~~its (i) the~~ substantial and unconditional commitment of the project to sell the output of ~~a such proposed QF generating facility project~~ to Dominion Energy South Carolina, Inc. (the “Company”) ~~, (ii) the commercial viability of the project, and (iii) the Seller’s (as defined below) financial commitment to develop the project, all~~ as provided for in S.C. Code Ann. § 58-41-20(D) ~~and~~, 18 C.F.R. 292.304(d)(2), and 18 C.F.R. 292.304(d)(3).

Execution and submittal of this Notice of Commitment is not required for a QF to negotiate a Power Purchase Agreement (“PPA”) with the Company. However, by submitting this form, [REDACTED] (“Seller”) commits to sell power to the Company from the facility described below in Section 3 (the “Facility”), and the Company will rely upon this Notice of Commitment to plan for and serve its load. The Company and the ~~QF-Seller~~ are herein collectively referred to as the “Parties.” ~~The QF-Seller~~ shall deliver this Notice of Commitment, along with any other notices hereunder, via certified mail, courier, hand delivery or email to:

Dominion Energy South Carolina, Inc. – Renewable Energy Technical Services
220 Operation Way
Mail Code: B-101
Cayce, South Carolina 29033
Attn.: Manager, Renewable Energy Technical Services
QFContracts@dominionenergy.com

1. Seller hereby commits to sell to the Company all of the electrical output of the ~~Seller’s QF described in Seller’s self-certification of QF status filed with the Federal Energy Regulatory Commission (the “FERC”) in Docket No. QF _____ (the “Facility”)~~ Facility described below, located at _____ (the “Project Site”); provided, however, that if ~~Seller has a~~ the maximum net power production capacity of the Facility is 1 MW or less, and such QF is exempted from filing with the Federal Energy Regulatory Commission (the “FERC”) to obtain QF status, the Facility Description in Section 3 shall be deemed the “Project Site.”
2. The name, address, and contact information for Seller is:

Name: _____

Telephone: _____

Address: _____

Email: _____

3. Facility Description:

i. Generator.

(1) QF status filed with the FERC in Docket No.:

(2) Maximum Gross Power Production Capacity in MW_{DC} listed on line 7a of the Generating QF's FERC Form 556:

(3) ~~i.Nameplate rating:~~ Maximum Net Power Production Capacity in MW_{AC} listed on line 7g of the Generating QF's FERC Form 556:

(4) ~~ii.~~ Fuel Source:

(5) Please attach 8760 projections for the total Facility output (including storage, if applicable) as Exhibit A.

(6) ~~iii.~~ Electrical Location:

(7) ~~iv.~~ Physical Location (Address, E 911, or GPS):

ii. ☐ Storage (check this box if the project contains a storage component).

(1) Is there a Form 556 on file with the FERC—other than the form referenced in Section 3(i)(1), if any—that relates to the storage device?

a. Yes ☐

i. If yes, please provide the FERC Docket No.:

b. No ☐

(2) Description of storage device in the Form 556 that is referenced in Section 3(i)(1) or 3(ii)(1), as applicable:

(3) AC or DC coupled:

- (4) Generation Fuel Source:

- (5) Maximum Net Discharge Rating in MW_{AC}:

- (6) Maximum Discharge Rating in MW_{DC}:

- (7) Maximum Charge Rating MW_{DC}:

- (8) Rated Battery Storage Capacity in MWh_{AC}:

- (9) Hours of Discharge at Maximum Net Discharge Rating (Hours):

- (10) Maximum Discharge Ramp Rate MW_{AC}/s:

- (11) Round Trip Efficiency (%): Best, worse, and average:

- (12) Will Seller operate the storage device in accordance with the Company's dispatch instructions?

a. Yes ☐
b. No ☐
- (13) Electrical Location:

- (14) Physical Location (Address, E 911, or GPS):

4. By execution and submittal of this Notice of Commitment, Seller certifies as follows:

- i. Subject to Section 8(ii) below, Seller shall commence delivery of its electrical output to the Company on or before the date that is 365 days after the Submittal Date (as defined below).
- ii. Seller will be able to deliver ~~its~~ the full electrical output of the Facility to the Company for a period of 10 years, or for such lesser period that may be mutually agreed to in a PPA executed by the Parties (the "Delivery Term").
- iii. Seller has taken meaningful steps to obtain site control of the Project Site adequate to commence construction of the Facility.
- iv. ~~iii.~~ The documents attached hereto as Exhibit A-B establish that Seller has ~~secured control of the Project Site for at least the length of the Delivery~~

~~Term~~secured—or has submitted all applications and filing fees necessary to secure—all local permitting and zoning approvals for the Project Site necessary to commence construction of the Facility.

v. ~~iv.~~ Seller either has Interconnection Service for the Facility or has requested Interconnection Service for the Facility from the Company, pursuant to the South Carolina Generator Interconnection Procedures, Forms, and Agreements. If ~~DESC~~the Company has tendered a System Impact Study Agreement to Seller, then Seller has executed and returned to the Company a signed System Impact Study Agreement with all technical data necessary to complete the System Impact Study, and has paid any deposits required therein.

vi. ~~v.~~ On or prior to the Submittal Date, Seller submitted a non-refundable fee to the Company in the amount of five thousand dollars (\$5,000.00).

5. This Notice of Commitment shall take effect on its “Submittal Date” as hereinafter defined. “Submittal Date” means (i) the receipted date of deposit of this Notice of Commitment with the U.S. Postal Service for certified mail delivery to the Company, (ii) the receipted date of deposit of this Notice of Commitment with a third-party courier (e.g., Federal Express, United Parcel Service) for trackable delivery to the Company, (iii) the receipted date of hand delivery of this Notice of Commitment to the Company at the address set forth above, or (iv) the date on which an electronic copy of this Notice of Commitment is sent via email to the Company if such email is sent during regular business hours (9:00 a.m. to 5:00 p.m.) on a business day (Monday through Friday excluding federal and state holidays). Emails sent after regular business hours or on days that are not business days shall be deemed submitted on the next business day.
6. By execution and submittal of this Notice of Commitment, Seller acknowledges that the rates for purchases from the Facility will be based on the Company’s applicable ~~costs~~cost rates as of the Submittal Date, calculated using data current as of the Submittal Date, unless otherwise mutually agreed.
7. The Parties acknowledge and agree that upon execution of a PPA for the Facility by the Parties, the terms and conditions therein shall govern the purchase and sale of power by and between the Parties.
8. This Notice of Commitment shall automatically terminate, except for those provisions contained in Section 9, and be of no further force and effect in each of the following circumstances:
 - i. Upon execution of a PPA between Seller and Company for the Facility.
 - ii. If Seller does not execute a PPA for the Facility within the later of (i) 90 business days after the Submittal Date, or (ii) 60 business days after receipt of an executable PPA from the Company, provided, however, that if a final interconnection agreement for the Facility has not been tendered to Seller five business days prior to the expiration of such deadline, the deadline for

execution of the PPA shall be the date that is five business days after the date that the final interconnection agreement is tendered to the Seller.

- iii. If the Seller does not commence delivery of ~~its~~ the electrical output of the Facility to the Company within 365 days of the Submittal Date; provided, however, the Company has sufficient interconnection facilities available. If the Company determines that (i) sufficient interconnection facilities or (ii) other facilities and equipment including any modification, additions or upgrades to the Company's system, as specified in the interconnection agreement, that are needed to accommodate delivery of energy to the Company's System from the Facility ("Network Upgrades") are not available, and the delay in the availability of sufficient interconnection facilities or Network Upgrades is caused by (a) an event of Force Majeure (as that term is defined and governed in Article X of the Company's Form PPA approved by the Public Service Commission of South Carolina in Docket No. ~~2019-184-E~~ 2021-88-E), (b) a delay caused solely by Company, or (c) any delay in the Company's completion of the interconnection facilities or the Network Upgrades by the date that is 365 days after the Submittal Date unless Seller directly or indirectly has caused such delay; the Company shall inform the Seller at least 30 calendar days prior to the expiration of such 365-day period, and shall give the Seller a description of the additional facilities required to be constructed by ~~DESC~~ the Company in order to establish adequate interconnection facilities. For the avoidance of doubt, neither party shall incur liability to the other for liquidated damages or similar damages pursuant to this Section 8(iii) arising out of the Company having insufficient interconnection facilities or Network Upgrades.

- 9. Upon termination of this Notice of Commitment pursuant to Section 8(ii) or (iii), ~~the Seller shall pay to Company liquidated damages equal to the sum of (i) \$5,000.00 per MW-AC for nameplate rating (as specified in Section 3.i above) up to 20 MW-AC plus (ii) \$2,000.00 per MW-AC for all capacity above 20 MW-AC (as specified in Section 3.i above). Seller shall receive such payment of liquidated damages within fifteen (15) days of the effective date of the termination of this Notice of Commitment.~~

- i. The Seller shall pay to Company liquidated damages equal to the sum of (i) \$5,000.00 per MW-AC for Maximum Gross Power Production Capacity (as specified in Section 3(i) above) up to 20 MW-AC plus (ii) \$2,000.00 per MW-AC for all capacity above 20 MW-AC (as specified in Section 3(i) above). Company shall receive such payment of liquidated damages within fifteen (15) days of the effective date of the termination of this Notice of Commitment.
 - ii. Neither Seller nor any affiliate and/or successor of Seller, nor any affiliate and/or successor of Seller to the Facility, including, without limitation, ownership and/or operation of the Facility, will require or seek to require the Company to purchase any output (energy or otherwise) from the Facility

under any applicable law (including without limitation PURPA) or otherwise at a price higher than the Company's applicable avoided cost rates as of the Submittal Date for any period during the 2 years following such termination. Seller, on behalf of itself and on behalf of any other person or entity on whose behalf it may act, and on behalf of any successor to Seller or successor to the Facility, hereby agrees to the terms and conditions in the above sentences, and hereby waives any right it may have to dispute the above sentence.

[signature page follows]

I swear or affirm, in my capacity as a duly-appointed officer of the Seller, that (i) I have personal knowledge of the facts stated in this Notice of Commitment, (ii) the Company may rely on this commitment for its resource needs and resource planning purposes, and (iii) I have authority to make this application on behalf of Seller, (iv) to my knowledge, all of the statements and representations made in this Notice of Commitment are true and correct as of the date hereof, and (v) Seller will comply will all requirements of the Public Service Commission of South Carolina and this Notice of Commitment.

By

Name

Title

Date

Exhibit A

See attached.

Exhibit B

See attached.
